

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

**Implementation of Pay Telephone  
Reclassification and Compensation  
Provisions of the Telecommunications  
Act of 1996**

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CC Docket No. 96-128

**COMMENTS OF  
CORRECTIONS CORPORATION OF AMERICA**

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Corrections Corporation of America (“CCA”), by its attorneys, hereby files its Comments on the Alternative Rulemaking Proposal (“Alternative Proposal”) submitted by Martha Wright and others (the “Petitioners”).<sup>1</sup> Following their initial petition for rulemaking seeking a sweeping FCC mandate to restructure prison telephone systems across the country, the Petitioners have resurfaced over three years later requesting a different variation of the same theme – a sweeping FCC order establishing a one-size-fits-all benchmark rate for long distance prison calling services at every prison, county jail or detention center regardless of the facility’s size, design or security requirements. The Alternate Proposal also reiterates the Petitioners’ request for an order mandating that every prison telephone system offer debit card calling. In these Comments, CCA again demonstrates that the Petitioners’ request should be rejected.

**I. Summary**

As CCA and others demonstrated more than three years ago, Petitioners’ efforts to analogize correctional facilities to the free market, or even to the Federal Bureau of Prison

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<sup>1</sup> These Comments are timely filed pursuant to a Wireline Competition Bureau Order seeking comments on the Alternative Proposal. *See Order*, DA 07-1366, released March 21, 2007.

telephone system, is simply wrong. Contrary to the claims of Petitioners, there are substantial interests of the state and local government authorities that prevent the simplistic adoption of models that ignore the significant costs of providing inmates with the ability to make calls, and the variety of settings in which these calls are made. To the extent that the Petitioners have shown anything, they have demonstrated that the market is working, and other responsible authorities, including the states and correctional facility managers, are improving service and bringing down rates. Inmate calling service rates across the country are declining, as evidenced by the list of states (New York, Florida, Washington, Colorado, Indiana, Nebraska, Vermont, Maryland and Missouri) cited in the Alternative Proposal itself. Similarly, a variety of debit and other pre-paid offerings are now available at most correctional facilities, including more than 80 percent of CCA's facilities. Thus, rather than justifying the Petitioners' request for the imposition of benchmark rates and an order requiring debit card calling capability in every inmate calling system, the market evidence provided by Petitioners and CCA counsels against such drastic regulatory interference in the operation of the market.

Even if the Commission somehow determines that the FCC should intervene and that benchmark long distance rates should be established for prison calling systems, the evidence submitted by the Petitioners is woefully inadequate to establish just and reasonable rates under Section 201. Setting rates for inmate calling services will be an extremely complicated and lengthy process given the wide variety of detention facilities across the country, and the series of variables that must be considered in establishing a facility's costs for providing telephone service include, for example, the size and location of the facility, the security level of the facility and the rate of turnover of inmates in the facility.

In fact, the only sure thing about such a ratemaking proceeding is that the one-size-fits-all benchmark rate put forward by the Petitioners will be rejected. It is highly unlikely that any system of federal rate regulation could be established and administered that would meet the legitimate needs of the whole range of correctional institutions that provide and oversee inmate calling services. Even if this observation is deemed too pessimistic, there can be no serious doubt that the incredible complexity in determining the cost structure at each detention facility simply cannot be reduced to the single benchmark rate proposed by Petitioners.<sup>2</sup> Rather than requiring correctional facilities across the country to submit cost information, CCA urges the FCC to reject the Petitioners' alternative request and continue monitoring the trends in inmate calling service charges across the country. Similarly, CCA urges that the Commission allow the market to continue to develop and implement the variety of debit and other pre-paid offerings that are now available at the overwhelming number of correctional facilities.

## **II. Background**

Founded in 1983, CCA specializes in the design, building and management of prisons, jails and detention facilities and the provision of inmate residential and prisoner transportation services in partnership with federal, state and local governments. CCA provides services to all three federal corrections agencies, almost half of all states, and more than a dozen local municipalities. CCA is authorized by these federal, state and local governments to furnish and operate these correctional facilities as a substitute or complement to the correctional facilities supplied and managed by these government agencies and their departments of correction. CCA

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<sup>2</sup> Indeed, the Petitioners implicitly recognized as much in the last paragraph of the Alternative Proposal. Petitioners indicated that if it is determined that the record is insufficient to impose the requested benchmark rates, the Commission should "take whatever steps are necessary to create a sufficient record." *See* Alternative Proposal at 29-30.

has approximately 72,500 beds in 65 facilities, including both facilities it owns and those facilities under contract for management in 19 states and the District of Columbia.

Currently, CCA manages more than 70,000 inmates, including males, females and juveniles at all security levels, and employs more than 16,000 professionals nationwide. CCA also offers a variety of rehabilitation and educational programs, including basic education, life skills and employment training, and substance abuse treatment. CCA also provides health care in its correctional facilities, including medical, dental and psychiatric services, food services and work and recreational programs.

CCA, among others, opposed the Petitioners' initial request that the Commission: (i) prohibit exclusive inmate long distance service arrangements, (ii) prohibit commission payments for interstate calls at privately administered prisons and (iii) allow competitive carriers to interconnect with inmate telephone service facilities to provide competitive long distance rates for inmate calling.<sup>3</sup> In its initial comments, CCA noted that the FCC's rules and policies traditionally have permitted state and local governments to establish the structure, costs and charges for inmate calling services, balancing the goal of making telephone service available to inmates at the same time that they protect the safety of the public and the interests of law enforcement professionals.<sup>4</sup>

CCA's comments demonstrated that the Petitioners' proposals to prohibit exclusive inmate long distance service arrangements as well as the payment of commissions to federal, state or local prison administrators sought to substitute their judgment, and the judgment

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<sup>3</sup> See Comments of Corrections Corporation of America, filed March 10, 2004; Reply Comments of Corrections Corporation of America, filed April 21, 2004.

<sup>4</sup> See, e.g., CCA Comments, March 10, 2004, at 10-12.

of the FCC, with respect to the most necessary and desirable manner for correctional authorities to balance their legitimate law enforcement, security and rehabilitative interests.<sup>5</sup> CCA argued that there was no basis for the FCC to substitute the Petitioners' judgment on these issues and to make the Commission the repository of countless new regulatory requirements regarding the offering of telephone service in county jails, detention centers, federal and state prisons and other varied correctional facilities.<sup>6</sup> Indeed, CCA demonstrated that the regulatory regime requested for inmates in correctional facilities exceeded the rights of tenants in buildings and guests at hotels.<sup>7</sup> CCA urged the Commission to continue to deferring to prison administrators, rather than acquiesce in the Petitioners' attempt to impose a new regulatory regime that would necessitate ongoing Commission oversight of the methods by which a whole host of correctional facilities implement their security and anti-fraud protections and charge for the cost of providing inmate calling services.<sup>8</sup>

### **III. The FCC Should Not Establish The Benchmarks Requested By Wright Petitioners.**

The Commission must reject the Petitioners' latest proposal to adopt "one-size-fits-all" benchmark rates to be mandated for all interstate, interexchange inmate calling services regardless of the type of jail, prison, detention center and correctional facility involved. For many years, the FCC has recognized that there are a long litany of precautions and efforts that must be undertaken by correctional facilities that make inmate calling services "quite different

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<sup>5</sup> *Id.* at 27-31; CCA Reply Comments, April 21, 2004, at 8-13.

<sup>6</sup> *Id.*

<sup>7</sup> CCA Comments, March 10, 2004, at 25-27.

<sup>8</sup> In its initial comments in this proceeding in March 2004, CCA submitted a Joint Declaration of Peter K. Bohacek, Ph. D., and Charles J. Kickler, Jr. *See* CCA Comments, March 10, 2004, Attachment A. Given the substantial period between the Petitioners' initial filing and its most recent filing of its Alternative Proposal, as well as the brief period provided for comments on that Alternative Proposal, CCA has not had sufficient time to refresh the data in that filing. Indeed, Mr. Kickler has apparently passed away in the intervening period.

from the public payphone services that non-incarcerated individuals use.”<sup>9</sup> CCA encourages the Commission to keep these differences paramount in evaluating any proposal to establish a new regulatory regime for inmate calling services.

**A. The FCC Cannot Set Benchmark Rates Given the Incredible Variety of Correctional Facilities and the Absence of Carrier Cost Information**

Contrary to the apparent views of the Petitioners, it would be arbitrary and capricious to maintain that the proposed “one-size-fits-all” benchmark rates can be mandated for inmate calling services given the great variety of jails, prisons, detention centers and correctional facilities to which it would apply. Given the disparity in operating situations, it would be virtually impossible for the FCC to establish one rate that properly reflects the actual costs of providing inmate calling services, and provides sufficient profit incentive for a carrier to undertake the risk of serving as a “prison telephone system.” In fact, there is absolutely no assurance that inmate calling service providers will choose to provide business as “prison telephone systems,” or even participate as interexchange carriers, on terms that provide the necessary components to assure that the security and anti-fraud concerns of correctional facilities will not be compromised.

As the Petitioners recognize, the Commission has previously refused to adopt proposals for billed party preference, rate caps, or price benchmarks.<sup>10</sup> Recognizing the substantial and “special security requirements applicable to inmate calls,”<sup>11</sup> the Commission declined to adopt these regulatory requirements, including price benchmarks, in large part

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<sup>9</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand & Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3252 (2002).

<sup>10</sup> *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122, 6156 (1998) (“BPP Order on Reconsideration”).



because of the variety of correctional facilities that must individually assess and implement inmate calling services. These correctional facilities may house only a few prisoners each day, or may house thousands. These facilities may be located in rural areas, or in urban areas; they may be minimum security or maximum security facilities. Finally, correctional facilities may hold prisoners for short periods, or for very long periods. As CCA has previously demonstrated, all of these factors play a role in the policy decisions that governmental authorities and correctional facility managers make with regard to the extent of precautions that need to be taken with respect to their inmate calling system, and the administrative procedures that they can implement to provide cost-effective services for inmate calls.<sup>12</sup> While the Petitioners assert that the Commission should use rates charged for comparable services to assess the reasonableness of ITSP's charged rate,<sup>13</sup> the Order that Petitioners rely on emphasizes that "services offered under *substantially similar circumstances using similar facilities* lead to the expectation of similar charges."<sup>14</sup> The FCC has consistently evaluated the assets utilized and tasks performed by carriers to first determine whether costs of services are in fact comparable.<sup>15</sup>

As demonstrated above and specifically below, the Petitioners' proposal in this proceeding for a single benchmark rate for inmate calling services therefore is woefully inadequate to deal with the substantial security issues presented by the broad range of jails, prisons, detention centers and other correctional facilities. Any attempt to establish federal rate

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<sup>11</sup> *Id.*

<sup>12</sup> CCA Comments, March 10, 2004, at 32-38 & Joint Bohacek and Kickler Declaration, ¶¶ 25-35.

<sup>13</sup> Alternate Proposal at 16.

<sup>14</sup> *AT&T Corp. v. Business Telecom, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd. 12312, 12324 (2001) (*emphasis added*).

<sup>15</sup> See, e.g., *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd. 18730, 18790-93 (1997).

regulation to meet the legitimate needs of the whole range of correctional facilities that provide and oversee inmate calling services would necessarily involve the Commission in complex structural and rate regulation for many years to come. Given the evidence that the market is working and the cost of inmate calling service is coming down, as discussed below, CCA submits that a ratemaking rulemaking in this context would be unnecessary and likely counterproductive to the FCC's overall goal of reducing the costs and enhancing the services offered by ITSPs.

**B. The ITS Federal System (BOP) Rate Is Not An Appropriate Baseline**

The linchpin of Petitioners' request that the Commission establish a benchmark rate for inmate telephone service is the debit account rate of the federal Inmate Telephone System ("ITS") managed by the Federal Bureau of Prisons ("FBOP"). Using the ITS debit cost rate of \$0.17 as a baseline, Petitioners suggest that the Commission adopt benchmark rates no higher than \$0.20 per minute for debit calling and \$0.25 per minute for collect calling.

Petitioners' reliance on the FBOP's ITS debit costs as a baseline for their proposed benchmark rates for inmate calling services must be rejected for several reasons. First, the ITS rates are low because the FBOP achieves significant economies of scale by pooling the calling demand at all of its facilities in one ITSP. Most state and local correctional facilities cannot achieve sufficient economies even to approach the FBOP ITS rates; in fact, CCA's private correctional facilities managed for the FBOP cannot access the ITS facilities or rates. Second, many state and local correctional facilities are underfunded, cannot defray their costs across a larger pool of users, and do not have the capacity to draw on the resources of the federal government's favorable communications contracts. For example, it is especially inapposite to use the FBOP's ITS rates when the FBOP is able to defray their costs through the use of the

Federal Telephone System, a federal government telephony system provided by a contract negotiated by the federal government. Finally, the FBOP's system has a range of facilities that is much less diverse than the facilities managed by other governmental authorities, and can aggregate their telephony services. Not only are state and local facilities more diverse, but costs and procedures are not easily shared, given their management by and for different governmental authorities.

**C. The Proper Comparison for Inmate Collect Calling Rates is the Rates for Private Person to Person**

The Petitioners support their request for benchmark rates by comparing their worst-case inmate calling rates to standard long distance rates, including rates for standard prepaid and debit calls. The most appropriate evaluation of inmate calling rates, however, would be to compare the rates charged for calls from correctional facilities with the rates charged for person-to-person collect calls that are available to the general public. Courts and the Commission have recognized the need of correctional facilities to identify, monitor, and block inmates calls to specific individuals, and this need, in addition to the need to establish other security measures, makes station to station calls the more comparable model.<sup>16</sup>

As CCA has determined that residential and payphone long distance collect rates among the non-incarcerated public are generally higher than the interstate inmate calling rates. Using Bell South as the long distance carrier, a 0+ automated collect station to station call from a residence in Louisiana to a residence in Indiana costs \$2.60 for the first minute and \$.15 per minute thereafter. An automated collect call to the same number in Indiana from a payphone in Louisiana would cost \$7.14 for the first minute and \$1.15 for each minute thereafter. From a

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<sup>16</sup> See *BPP Order on Reconsideration*, 13 FCC rcd. at 6156; *Bowers v. T-Netix*, 837 A.2d 608, 612 (Pa. Commw. Ct. 2003).

different payphone, the consultant found that the same automated collect call was \$4.51 for the first 3 minutes and \$.42 for each additional minute. An automated interstate collect call from a residence in Nebraska would contain a \$4.99 surcharge and \$1.15 per minute. Where the general public pays these rates for station to station collect calls, inmate calling charges, given the security and administrative issues involved, certainly are not expected to be less.<sup>17</sup>

#### **D. The Market is Working**

To support the adoption of benchmark rates, Petitioners also contend that there is an upward trend in commission rates and inmate calling service rates and that this trend has “continued for years.” This is simply not true: Rates in the largest majority of correctional facilities are moving in a downward trend. This downward trend is evident in the many examples provided by the Petitioners themselves. According to Petitioners, rates have been reduced in New York, Florida, Washington, Colorado, Indiana, Nebraska, Vermont, Maryland, and Missouri. This is consistent with the projection made in CCA’s March 2004 comments, where CCA noted pending legislation in at least 10 states that would limit, phase out or otherwise impact the charges of commissions or rates and the methods of offering inmate calling services.<sup>18</sup> Indeed, since March of 2004, other jurisdictions have enacted such legislation.<sup>19</sup> Finally, CCA has determined that calling rates have dropped in Kentucky (\$0.30 per minute), Indiana (\$0.25 per minute), New Hampshire (\$0.20 per minute), and the state of Hawaii (\$0.25

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<sup>17</sup> Moreover, Petitioners’ blithe reliance on the advertised rates for over the counter, pre-paid debit cards as the basis for its rate comparison is also flawed. Not all over the counter long distance telephone cards truly charge the consumer a low per minute charge. Many telephone calling cards sold to the general public contain additional fees and surcharges which also drive up the cost of the call.

<sup>18</sup> These states included California, Louisiana, Maryland, Massachusetts, Mississippi, Nebraska, New Jersey, Oklahoma, Rhode Island and Virginia.

<sup>19</sup> These jurisdictions include Connecticut, Georgia, the District of Columbia, and New Mexico.

per minute).<sup>20</sup> Despite their special security and administrative needs, governmental authorities and correctional facilities are adopting programs that bring down rates to balance their rehabilitative and other goals.

Moreover, as discussed below, ITSPs are offering more alternative calling options. The Commission has recognized that options such as allowing inmates to use pre-paid debit cards and to place calls to pre-approved 800 numbers of their families and counsel "exert downward pressure on high interstate rates" and "diminish the ability of a prison and its PIC to set supracompetitive rates, and thus lessen or obviate the need for further federal regulations."<sup>21</sup> Based upon the availability of these additional calling options and the downward trend in collect and prisoner debit calling rates, there is no need for the Commission to regulate or set "benchmark rates" for inmate calling services. As the Commission has previously stated, benchmark rates would not be the best alternative, benchmark rates would be overly regulatory, and such regulation could stifle rate competition.<sup>22</sup>

#### **IV. The Commission Should Not Mandate That Inmates Have Access To Debit Cards.**

In its new Alternative Proposal, the Petitioners again request that the FCC mandate that every state provide debit calling options at every one of their correctional facilities, essentially reiterating their earlier request for the FCC to prohibit "collect-call only restrictions" in all correctional facilities.<sup>23</sup> In the past, the Petitioners relied heavily on the testimony of their consultant, Douglas A. Dawson, who attempted to explain why pre-paid debit calling systems

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<sup>20</sup> These jurisdictions do impose surcharges, which they find necessary to cover the overall costs of providing inmate calling services.

<sup>21</sup> *BPP order on Reconsideration*, 13 FCC Rcd. at 6141.

<sup>22</sup> The Commission previously has stated that the "imposition of price controls or benchmarks upon [an] entire industry, in order to curtail rate gouging by some carriers... would be overly regulatory and could even stifle rate competition." *BPP Order on Reconsideration*, 13 FCC Rcd. at 6141.

should be imposed on correctional facilities, discounting the security concerns and administrative burdens associated with implementing any debit calling systems.<sup>24</sup> In their new pleading, the Petitioners paternalistically maintain that the FCC should now mandate that every prisoner have the right to make debit card telephone calls, regardless of the burdens of administering such a program or the concern that various correctional facilities might have regarding the effect of implementing and managing a debit calling program on the safety of their inmate population. In the Petitioners' view, security concerns "can be addressed by issuing every inmate a PIN that has to be dialed before every call" and by "restricting inmates to a limited set of designated telephone numbers that they may call."<sup>25</sup> Under the Petitioners' regime of running each prison's inmate calling service, the prison could establish and maintain a database matching the PIN, the inmate's balance, and the numbers that can be called by the prisoner.<sup>26</sup> In the Petitioners' view, all correctional facilities should be forced to implement this pre-paid debit calling system.<sup>27</sup>

As CCA demonstrated in its comments on the Petitioners' prior iteration of this proposal, the Commission must not compel jails, prisons and other correctional facilities to implement a pre-paid debit calling system. In its initial comments, already of record in this proceeding, CCA demonstrated that the FCC (1) does not have authority to compel correctional facilities to provide their inmates with the option of debit calling; (2) should not substitute its judgment for that of the correctional facilities and state and local governments concerning the serious risks associated with making debit calling available; and (3) should not force these

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<sup>23</sup> Petitioners' Alternative Proposal, at 23-27; *see, e.g.*, Petition at 8.

<sup>24</sup> *See* Dawson Statement, ¶¶ 30-37.

<sup>25</sup> Alternative Proposal, at 24.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 26-27.

governmental authorities and correctional facilities to accept the expenses and administrative requirements of debit calling.<sup>28</sup> Most importantly, in its comments more than three years ago, CCA argued that governmental authorities and correctional facilities had every incentive to adopt pre-paid calling plans where they were appropriate for the facility, to eliminate problems with bad debt.<sup>29</sup>

As an initial matter, CCA's review of its own facilities and their inmate calling service offerings confirms that FCC intervention is not necessary or appropriate, because the correctional facilities and states have balanced their correctional and telephony needs by developing alternative calling services as standards in their service offerings. A variety of debit and other pre-paid offerings are available, except in states where the responsible correctional authorities have decided that the availability of such offerings is against their best judgment.<sup>30</sup> Alternative calling services include debit systems, prepaid cards, and pre-paid collect calling options. From a review of approximately 30 facilities run by CCA, it appears that at least one of these alternative prepaid options is available at more than 80% of its correctional facilities, with debit calling available at more than half of its facilities and prepaid card options available at more than an additional one-third of its facilities. Neither of these options are available at approximately 15% of CCA's facilities; these facilities are all located in two states, Kentucky and Tennessee.

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<sup>28</sup> CCA Comments, March 10, 2004, at 16-21.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> Even four years ago, Dawson acknowledged that pre-paid debit products already existed at a number of federal and state facilities, including some privately-administered facilities at which Evercom provided inmate calling services. Dawson Affidavit, ¶ 30. The Petitioners spend almost three pages of their pleading detailing the innovations made by inmate calling service providers, and the facilities where they are deployed. Alternative Rulemaking Proposal, at 24-26.

In the 85% of CCA's facilities where these prepaid options are available, they are most often accompanied by reduced rates, because these options remove the element of bad debt, which can account for as much as 25% of billed inmate calling services. For this reason, where it is appropriate for the correctional facility, inmate telephone service providers are encouraging and assisting inmates and their families to move to these lower cost calling options. For this reason, given the multiple manners in which prepaid options can be implemented, the FCC should not mandate particular calling options for inmates, and need not insert itself into the market for designing and implementing safe and secure methods for inmates to contact those outside the prison walls.<sup>31</sup>

Given the few places that have yet to adopt one of these prepaid alternatives, the FCC should not assume that it can best determine what calling options should be made available in all correctional facilities. The Petitioners' reliance on the Federal Bureau of Prisons (the "BOP") for the mandated model is inapposite. The BOP has developed its own accounting, credit and calling system, and implemented that system across a large population of users who are incarcerated in federal correctional facilities.<sup>32</sup> Additionally, the BOP has satisfied itself that its security concerns can be managed consistently across the network architecture it has implemented throughout its facilities that is carried exclusively on the Federal Telephone System ("FTS") that is not available to other correctional facilities.<sup>33</sup> Correctional facilities managed by private correctional institutions for different governmental authorities (including the BOP, states, cities, and counties) have a wide range of abilities and needs, based on their different numbers of

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<sup>31</sup> As Dawson's testimony implied, correctional facilities thus have every incentive to implement debit or other prepaid calling options without any federal mandate to the extent that the variety of these alternatives reduces cost and eliminates collection problems, but do not create unacceptable security risks and administrative burdens.

<sup>32</sup> See CCA Comments, March 10, 2004, Joint Bohacek & Kickler Declaration, ¶¶ 23-24.

<sup>33</sup> *Id.*



inmates, different lengths of stay, different physical plants, and different correctional objectives. The Commission therefore should not impose its own judgment regarding the security risks to be taken or the administrative costs to be incurred; instead, the Commission should allow these governmental authorities and the managers to make their own judgments based on their own economic and security concerns, and implement pre-paid debit processes only as they deem it advisable. This is especially true where, as described above, the largest majority of correctional facilities have implemented a variety of forms of prepaid options, based upon their commercial incentive to collect billed charges.

In any event, there is no authority in Section 201, Section 226, Section 276 or any other section of the Act that would support imposition of such a requirement. While the Commission has authority under Section 201 to ensure that interstate rates and conditions are just and reasonable, that is a far cry from establishing a requirement that jails, prisons and other correctional facilities must offer and administer pre-paid calling offerings. As CCA demonstrated three years ago, the requirements of Section 226 that are applicable to call aggregators have been expressly recognized to be inapplicable to inmate calling systems, and the requirements for fair compensation under Section 276(b)(1)(a) flow to the *carrier*, and do not establish rights for the end user, in this case the inmates or the parties they call.<sup>34</sup> In their most recent reiteration of their demand for a unique right to a debit calling system for inmates, the Petitioners have not demonstrated that any section of the Communications Act provides the Commission with sufficient authority to require that all correctional facilities offer pre-paid debit offerings, even if there were no countervailing concerns about the merits of adopting such a requirement. While Petitioners cite the introduction of legislation by Rep. Rush of Illinois that

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<sup>34</sup> See CCA Comments, March 10, 2004, at 9-10 & n.9.

presumably would call for restructuring of elements of inmate calling services,<sup>35</sup> until Congress acts upon the legislation proposed by Rep. Rush, the FCC could not rely on such legislation for the authority to mandate specific prepaid calling options.

And notwithstanding the Petitioners' simplistic conclusion that any correctional facility can adopt a debit calling system, there are significant countervailing concerns about the merits of an FCC-mandated prepaid debit calling option at all prisons and jails. Legitimate penological interests are implicated by the adoption of a debit calling mandate, as the Commissioner of the New Jersey Department of Corrections advised the FCC more than three years ago. Addressing the contentions regarding the questions of security and cost posed by the Petitioners' proposal, the Commissioner stated:

In New Jersey corrections, collect calling is the only feasible means of providing inmate phone service. It is the only technology approach that allows the level of security needed to ensure that inmates are not conducting illegal businesses, are not able to bypass blocked numbers, are not making harassing calls, and are not using the telephone for purposes other than legitimate interpersonal contact. New Jersey authorities have long experienced these situations in state correctional facilities, and they cannot be tolerated on an ongoing basis. Collect calling allows the called party to accept or deny the call with the full knowledge that the caller is an inmate incarcerated at a New Jersey correctional facility.<sup>36</sup>

The Petitioners' efforts to minimize the problem of creating a prepaid debit commodity fall far short of supporting the substitution of their judgment for the judgment of prison authorities on this issue. While the Petitioners suggest that corrections facilities can limit the telephone

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<sup>35</sup> Alternative Rulemaking Proposal, at 8-9.

<sup>36</sup> Letter to Marlene H. Dortch from Devon Brown, Commissioner, New Jersey Department of Corrections, CC Docket No. 96-128, filed February 6, 2004. The New Jersey Department of Corrections Commissioner's view was confirmed by Bohacek and Kickler in their Joint Declaration attached to CCA's Comments, where they indicated that collect calling had proven to be the most secure system for inmate use. *See* CCA Comments, March 10, 2004, Joint Declaration of Peter K. Bohacek, Ph.D., and Charles J. Kickler, Jr., ¶ 21.

numbers that can be associated with prisoners' accounts,<sup>37</sup> once the funds are available in the accounts, coercion can be applied to ensure that certain numbers are associated with those accounts, notwithstanding inmate disagreement. Thus, even where such software programming controls are available and effective, coercive pressure can still be applied by aggressive inmates to attempt to ensure that the funds of their fellow inmates are authorized to work for numbers that they want to call.

Moreover, as CCA also made clear in 2004, the adoption of a federal regulation or policy that mandates that all facilities make available a debit calling option to inmates inherently imposes significant additional administrative costs and burdens on the correctional facilities and telephone operators.<sup>38</sup> The Petitioners had maintained that the only real differences between the collect calling option and the pre-paid debit option are who pays for the call and how the payment is made.<sup>39</sup> The real security and administrative differences, amongst others minimized and ignored by the Petitioners, are sufficiently material to validate the Commission's prior conclusions for refusing to intervene in the judgment of correctional institutions in providing inmate calling services to those incarcerated in their facilities. As Bohacek and Kickler maintained in their Joint Declaration, the administrative cost for implementing a debit system is high, and some state and local correctional facilities cannot bear its burden.<sup>40</sup> For example, Peter V. Macchi, the Director of Administrative Services for the Massachusetts Department of Correction, commented in this proceeding that while the Department would "very much like to migrate" to a system where the inmate could choose to make a debit call, they were unable to do

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<sup>37</sup> Alternative Rulemaking Proposal, at 24.

<sup>38</sup> CCA Comments, March 10, 2004, Joint Declaration of Peter K. Bohacek, Ph.D., and Charles J. Kickler, Jr., ¶ 22.

<sup>39</sup> Dawson Affidavit ¶ 32.

<sup>40</sup> *Id.* ¶¶ 21-22.

so in 2003 because debit calling “is more staff intensive on resources” and the resources just were “not available to assume this extra work.”<sup>41</sup> While many more correctional facilities have implemented prepaid options since 2004, the FCC properly has left this choice to the governmental authorities and correctional facilities.

As the Petitioners tacitly acknowledge, the requirement to offer a pre-paid debit system requires the implementation, integration and management of a sophisticated automated processing system. Correctional facilities need to make major investments in hardware and software to offer a prepaid debit calling option. Even for automated inmate calling systems, the software that must ensure compliance with all requirements for call restricting, call monitoring, call recording and other calling security functions would not be replaced, but instead would need to be supplemented by, and integrated with, a debit monitoring function. Thus, the adoption of a requirement for pre-paid debit call processing adds significant new capital costs to the operations of all corrections facilities, or the carriers with which they contract.<sup>42</sup>

The correctional authorities also need to set up an extensive accounting process, which would, in part, manage individual inmate accounts. This accounting process requires methods for receiving and depositing funds, controlling and reviewing accounts, handling complaints from inmates and their benefactors who deposited the funds, and resolving disputes about the appropriate use of deposited funds. Moreover, in many state and local facilities where turnover in inmates is high, the process for opening and closing debit accounts, and refunding balances on account, could be extremely cumbersome and expensive. The record in this proceeding already reflects the testimony of the Commissioner of the Connecticut Department of

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<sup>41</sup> Comments of Peter V. Macchi, Director of Administrative Services, Massachusetts Department of Correction, CC Docket No. 96-128, filed February 11, 2004.

Corrections, who has testified against the use of debit accounts because of, among other things, the added administrative costs of the pre-paid debit calling option.<sup>43</sup>

Ultimately, the Commission's requirement that private correctional facilities make available to inmates a specific debit calling option will substitute the FCC's judgment for that of the correctional facility regarding the harms and costs of creating a commodity that can be the subject of threats, violence or other forms of coercion within the inmate population, and must be managed as such a commodity.<sup>44</sup> At the present time, given the incentives discussed above, the overwhelming majority of correctional institutions have addressed these issues adequately, and independently, and there is no need for such significant FCC intrusion into issues best decided by state and local authorities and correctional facility managers.

Finally, contrary to the Petitioners' claims, the FCC does not need to mandate debit calling access merely because some Competitive Local Exchange Carriers ("CLECs") refuse to terminate some inmate calls. The Petitioners have contended that "inmate service providers are increasingly unable or unwilling to enter into billing arrangements" with such

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<sup>42</sup> CCA Comments, March 10, 2004, Joint Bohacek and Kickler Declaration, ¶¶ 21-27.

<sup>43</sup> See Comments of WorldCom, Inc., CC Docket No. 96-128, May 24, 2002, at 12, citing Testimony of John J. Armstrong, Commissioner of Department of Correction, Finance Revenue and Bonding Committee Hearing, March 14, 2002. The Commissioner's concerns were substantiated by citation to experience with debit calling in Colorado, where ten additional full-time staff were required to manage debit accounts. *Id.* These costs could be exacerbated to the extent that the process for completing long distance calls varies from the manner in which local and intrastate calls are completed. Ultimately, mandating the availability of debit cards could supply upward pressure on costs and rates, especially where collect calling options will need to coexist.

<sup>44</sup> If the debit system were to be administered by the prison, it would have to be incorporated not only into the telephone system and software used to protect law enforcement interests and the public, but into the every day life of inmates. The personnel at jails, prisons, detention centers and other correctional facilities will be forced to ensure that it adopts policies and procedures to deal with coercion, or suffer the consequences. As demonstrated above, there are sound penological reasons for refusing to allow inmates to possess money, cigarettes and other items that can be stolen, bartered or extorted, and the FCC should not mandate the creation of a similar commodity.

CLECs, and as a result “cannot bill for an increasing percentage of inmate calls.”<sup>45</sup> The Petitioners allege that inmate calling service providers therefore are forced “to block inmate collect calls to numbers served by” these CLECs.<sup>46</sup> Correctional facilities and inmate calling service providers, however, have addressed this problem, and it cannot serve as a reasonable basis for mandating the provision of a prepaid debit system.

Inmate calling service providers generally do have billing arrangements with the major local exchange carriers, and also contract with traditional billing clearinghouses to permit calls to be completed. Where a CLEC refuses to bill collect calls to their customers, however, inmate calling service providers do arrange alternative means for completing inmate calls to customers served by these CLECs. To ensure that inmates can contact customers served by these CLECs that refuse to bill for collect calls, inmate calling service providers generally allow an inmate to make an initial free call to the blocked telephone number, so that the individual can be made aware of where the inmate is being housed and can be given information about setting up an alternative calling option. After this initial contact, a call processing unit will connect the CLEC’s customer with the correctional facility’s customer service center to establish an account. Other options are also available, including the use of 1-800 numbers to set up accounts. Inmate calling service providers and correctional facilities often display brochures in visiting areas that explain the various methods for ensuring the completion of calls.<sup>47</sup>

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<sup>45</sup> Alternative Rulemaking Proposal at 23-24.

<sup>46</sup> *Id.*

<sup>47</sup> Inmate calling service providers also work with correctional facilities to implement other means of communication, including e-mail and voice-mail features, where security concerns permit.

**V. Any New Rules for Inmate Calling Services Can and Should Only Be Applied to Contracts That Are Entered After The Adoption of Those Rules.**

The Petitioners have requested that if the Commission adopts benchmarks, or some other rules that would govern inmate calling services, the Commission should take the unusual step of implementing those rules immediately, and providing for a “fresh look” – or the termination of – existing inmate calling service contracts at the end of one year. As CCA has demonstrated, nothing in the Petitioners’ initial rulemaking request or their new alternative proposal suggests that the Commission should or needs to alter its positions in previous orders, and mandate benchmarks, prohibit commissions, or otherwise adopt new rules governing inmate calling services. Nevertheless, in the event the Commission should take some action, it would be arbitrary and capricious, unlawful, and bad policy to impose retroactively new rules on the provision of inmate calling services before the natural expiration of contracts calling for the provision of those services. Instead, given the short term of those contracts, and the manner in which they play a role in the negotiation of an entire package of correctional services provided to governmental authorities and inmates, any new rules only should be made applicable to contracts entered for inmate calling services after the effective date of any new rules. Implementation of new rules only on new contracts for inmate services also would prevent the need to take the unusual approach of terminating existing contracts, and potentially risk the elimination of inmate calling services at correctional facilities where contracts are terminated.

As demonstrated in CCA’s initial comments, and again above, there is no reason for the FCC to adopt regulations for inmate calling services that are more aggressive than those regulations applied to hotels, office complexes, or buildings. The proposals of the Petitioners give inadequate attention to the manner in which correctional authorities and facilities will recover their costs in implementing the Petitioners’ proposals, much less providing physical

space, administrative personnel, and supervision, except to prohibit explicitly, and implicitly, recovery of any of these costs through the assessment of commissions.<sup>48</sup> As CCA indicated in its initial comments in these proceedings, the revenues associated with the commission system have made it possible for correctional facilities to provide physical space for inmate calling systems, as well as personnel for oversight, review and tracking of inmate calls and the development of sophisticated, automated secure calling features that serve the needs of the prison and general population. As a general matter, revenues associated with the commission system have improved the quality and quantity of telecommunications services available to the inmate population, including, for example, reducing the number of inmates per telephone.<sup>49</sup>

As CCA also indicated in its initial comments, states may require payment of commissions directly to the state and take the revenues produced through the commission system and invest them in specific inmate benefit funds, or otherwise use them to offset the costs of providing prison services, including telephone services.<sup>50</sup> For example, by statute in Arkansas, commissions were paid to a sheriff's office fund, and all of those funds were to be used for communications facilities and equipment, or up to 50% of the funds could be used to maintain and operate county jails. In California, Mississippi, Montana, Ohio and Oregon, by further example, revenues and commissions have been directed to inmate welfare, activity and program

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<sup>48</sup> See, e.g., Petitioners Initial Petition at 8-9, 21; Attachment A, ¶ 67. Indeed, the costs of the correctional facilities and personnel are in no way included in the analysis of the viability of their proposed system, either in the Petitioners' initial proposal or their alternative proposal.

<sup>49</sup> See Commonwealth of Virginia, Members of the Joint Legislative Audit and Review Commission, Review of the Department of Corrections' Inmate Telephone System, January 1997, at 6 (since implementing commission payment system, inmates per phone decreases in Virginia from 34 to 18).

<sup>50</sup> See Comments of Roger Werholtz, Secretary, Kansas Department of Corrections, filed February 4, 2004 (commissions deposited in Inmate Benefit Fund used primarily to support programs and services for the inmate population); Comments of WorldCom, Inc., May 24, 2002, at 1-2; ("state budgets rely on commissions paid by inmate calling service providers ... [and] ... budgeting authorities subsequently allocate funds from general revenues to build and maintain their prison systems.... The system has also made it possible to provide more extensive, and more secure, telecommunications services.").



funds. The FCC must understand that privately-administered prisons do not operate any differently than state-run facilities with respect to the payment and use of commissions. Where commissions are charged, the funds they produce are used to off-set, among other things, the general costs of providing telecommunications services.

As a practical and logical matter, the state and local authorities have the ability to mandate how inmate calling service commissions are used, and where they are paid, because private correctional facility operators like CCA must obtain contracts for their services in a competitive manner. To the extent commissions are paid incorporating a margin in excess of the actual cost of space, personnel and other resources necessary to provide inmate calling services, it is the state or local authorities that ultimately control the assignment and allocation of these funds, because that governmental authority has the ultimate control over the facility resulting in the payment. As even the Petitioners have recognized, most states are now actively and aggressively limiting the use of commissions.

For these reasons, the FCC should not unilaterally impose a benchmark rate or otherwise reduce compensation for inmate calls. Changes in the charges or commission structure will impact the operating budgets of a large number of inmate facilities and departments of correction, and indeed, the operating budgets of some states that will need either to eliminate or limit some inmate services, including potentially inmate calling services, or raise additional revenues to pay for them. To the extent the Commission seeks to reduce inmate calling rates by eliminating or capping commission rates, or even by establishing benchmark charges for inmate calls, the revenues available to state and local correctional facilities will be reduced. And to the extent that the FCC desires to see prison facilities implement structural changes that would permit the development of more alternative calling options, the Petitioners' proposed elimination

of commissions will place even more stress on the operating budgets of governmental authorities that are experiencing significant growth in the number of inmates.

If, contrary to the arguments of CCA and others, the FCC feels compelled to adopt benchmark rates or limit commission charges, it should do so prospectively, and apply any new rules to inmate calling service contracts negotiated after the effective date of the new rules. Such implementation of new rules would prevent interference with the state's legitimate interests in recouping costs for the provision of inmate calling services, and not otherwise interfere with the contracts for the provision of the range of other correctional services that were negotiated in recognition of the terms of those contracts. Implementation of new rules only on new contracts for inmate services also would prevent the need to take the unusual approach of permitting the termination of existing contracts, and potentially risk the elimination of inmate calling services at correctional facilities where contracts are terminated.

CCA has reviewed its contracts with inmate calling service providers, and understands that the usual term for such contracts is three years. Indeed, CCA only has two contracts that extend beyond 2009. To the extent that the Commission adopts any regulations restricting the rights of correctional facilities to contract for the provision of inmate calling services, the Commission should make the rules applicable only to new contracts, or contract extensions, negotiated and entered after the effective date of newly-adopted rules. The Commission should not apply new rules to existing contracts which were negotiated under the prior rules and regulations. Such an approach will be less likely to interfere with the legitimate state interests in negotiating inmate calling service contracts, as well as a set of comprehensive contracts for rehabilitative and housing services for inmates in correctional facilities.

**VI. Conclusion.**

For the reasons provided in these Comments, and its prior comments and reply comments in this proceeding, Corrections Corporation of America opposes the proposals, initial and alternative, made by the Petitioners.

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